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Honorable Timothy Dore
Chapter 13
Hearing Date 8.16.23 9:30 am
Response Date 8.9.23
Location Seattle Rm 8106

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF WASHINGTON**

IN RE:

Emilie Villa Ignacio Padiernos

Debtor.

Case No. 20-11939- TWD

Chapter: 13

DEBTOR'S MOTION FOR APPROVAL
TO DISBURSE HOMEOWNER
ASSISTANCE FUNDS (HAF) GRANT
AND FOR WILFULL VIOLATIONS OF
THE AUTOMATIC STAY AND FRBP
3002.1

BASIS FOR MOTION

The Debtor, Emilie Villa Ignacio Padiernos, through her counsel, Erin Lane of The Washington Law Group, PLLC, hereby moves this Court to provide consent for her to enter into the Homeowner Assistance Fund Agreement, for this court to compel Northgate West Condominium Association to provide an explanation of the secured payoff amount with a clear payoff figure of the secured claim and special assessment provided within 7 days from entry of order and with invoices to support the amounts requested and attorney fees awarded to Debtor if this court deems appropriate for willful violations of the automatic stay under 11 U.S.C. § 362(k). In support of this motion the Debtor states the following:

1. The Homeowner Assistance Fund (HAF) was established under section 3206 of the
DEBTOR'S MOTION FOR APPROVAL TO
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1 American Rescue Plan Act of 2021. The U.S. Department of the Treasury has allocated
2 funds to the State of Washington to be used to prevent mortgage delinquencies and
3 defaults, foreclosures, and loss of utilities or internet/broadband services. In
4 Washington, the funds will be offered as a grant and can be used to reinstate eligible
5 qualified expenses such as for mortgage loans, homeowner's dues and homeowner's
6 assessments.

7 2. In Washington, The Homeowner Assistance Fund (HAF) is administered by Washington
8 State Housing Finance Commission (WSHFC).

9 3. The HAF assistance is offered as a grant that is paid directly to the servicer or other
10 authorized party, not the Debtor or Debtors' estate.

11 4. Because HAF assistance is a grant, obtaining these funds will not result in additional
12 monthly expenses for the Debtor. In other words, it is not a loan. See Declaration of
13 Debtor.

14 5. WSHFC has requested that applicants with active Bankruptcy cases obtain leave of this
15 Court before they may be fully approved for the HAF grant.

16 6. This court consented to the Debtor to apply for the HAF funds grant on October 19,
17 2022 (ECF# 79).

18 7. The Debtor obtaining funds through the HAF program would not cause harm to
19 creditors.

20 8. Debtor has approval from HAF to pay the arrears of her mortgage, arrears of to the
21 Northgate West Condominium Association (hereinafter "HOA"), and secured HOA
22 special assessments and any fees that maybe be associated with her mortgage or HOA.
23 Id.

24 9. Debtor is a below median income debtor, paying 0% to unsecured creditors, is currently
25 in month 36 of her plan and current on her plan payments.

26 10. The HAF program will help the debtor get current on her mortgage and HOA dues and
27 allow her bankruptcy case to close with a discharge.

28 11. The Debtor has had help obtaining the payoff figures from attorney Christina Latta-
Henry who has been helping her navigate this pro-bono. *See* declaration of Christina
Latta Henry.

12. Select Portfolio Servicing ("SPS") has provided a payoff figure of \$14,425.03 to
reinstate the mortgage to be current.

13. The HOA has provided a payoff figure for secured \$35,676.49 HOA dues (including

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1 attorney's fees and costs associated with arrears of \$4,707.90 and payment to special
2 assessments of up to \$35,288.25 depending on HAF funds available to the debtor. Id.

- 3 14. Once this court approves Ms. Padiernos to enter into the HAF program the payoff
4 figures will need to be updated by HAF underwriting. The SPS payoff has already been
approved by underwriting and the HOA disbursement is currently in underwriting.

5 **I. PAYMENT TO THE HOA**

6 Unsecured creditors are receiving \$0 under the plan. ECF #34. After numerous attempts
7 to receive a payoff figure from the HOA and HOA's counsel, The Northgate West
8 Condominium Association has provided a confusing payoff amount asserting \$42,429.33 of an
9 unsecured claim, a secured amount of \$35,676.49 in arrears, and a payoff of the special
10 assessment of \$35,288.25. *See* Declaration of Christina Henry. The HAF Funds will not pay
11 off unsecured amounts. The secured payoff amount states it includes "attorney fees and costs
12 (incurred and to be incurred upon payment in full) in the amount of \$6,883.64. This payoff is
13 good through 7.31.2023."

14 **A. Secured Amounts to the HOA**

15 The HOA is only entitled to the secured amounts and the special assessment amount.
16 Based on the HOA payoff letter it seems they are trying to collect on unsecured debts when the
17 plan clearly states \$0 will be paid. This is in clear violation of 11 U.S.C § 362(a)(5) and (6).
18 The unsecured debt the HOA is referencing in their payoff letter is a debt incurred prior to the
19 filing of this bankruptcy case. The HOA filed proof of claim #12 for this unsecured claim. The
20 Debtor would like an order from the court making it clear HAF is only paying for the secured
21 amount and the special assessment.
22

23 Further, the secured payoff amount is confusing and again in violation of .11 U.S.C.
24 §§ 362(a)(5) and (6). The HOA filed proof of claim #11-2 claiming arrears of \$4,707.90 with
25

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1 12% interest per annum. The HOA also filed post-petition fees for a total of \$6467.50 (Notice
2 of Post Petition Mortgage Fees, Expenses and Charges - \$2795.00 filed on 1.11.2021 and
3 \$3672.50 filed on 11.15.2021). *See* declaration of Erin Lane. There is no bankruptcy court
4 document filed that claims any right to \$35,676.49 in secured claims. The attorney fees should
5 only be \$6467.50. The \$6883.64 claimed in the HOA payoff letter has not been filed with the
6 court in violation of FRBP 3002.1(c).¹ Additionally, claims in the payoff letter that the HOA
7 will only accept payment *after* the discharge, and then at that time, will be willing to waive
8 \$17,507.80 in attorney's fees and costs associated with the secured claim. The payoff demand
9 for \$35,676.49 prior to any discharge is again in violation of 11 U.S.C §§ 362(a)(5) and (6).
10 This case is ready to finish as the debtor has completed 36 months of payments and with the
11 HAF funds grant she can complete her Chapter 13 Plan.
12

13
14 Debtor has been trying to get an explanation for the secured payoff amount for months.
15 *See* Declaration of Christina Henry. The Debtor would like an order from this court compelling
16 the HOA to provide an explanation of the secured payoff amount with a clear payoff figure of
17 the secured claim and special assessment provided within 7 days from entry of order and with
18 invoices to support the amounts requested. Debtor also believes they should not have to pay
19 any attorney fees to the HOA for trying to get this amount based on the Debtor's efforts for the
20 past months and the lack of response from the HOA and for violation of the discharge
21 injunction under 11 U.S.C. § 362(k). *Id.*
22
23

24 ¹ FRBP 3002.1(c) NOTICE OF FEES, EXPENSES, AND CHARGES. The holder of the claim shall file and serve on the
25 debtor, debtor's counsel, and the trustee a notice itemizing all fees, expenses, or charges (1) that were incurred in
26 connection with the claim after the bankruptcy case was filed, and (2) that the holder asserts are recoverable against
27 the debtor or against the debtor's principal residence. The notice shall be served within 180 days after the date on
which the fees, expenses, or charges are incurred.

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II. Payment to Select Portfolio Servicing

Debtor has no issue with the payoff figure to Select Portfolio Servicing. Upon entry of order from this court HAF will seek an updated payoff figure from Select Portfolio Servicing.

III. Prayer for Relief

Wherefore, the Debtor requests that this Court give approval for disbursement of the Homeownership Assistance Funds (HAF) to SPS and the HOA and compel the HOA to provide an explanation of the secured payoff amounts demanded with clear payoff figures of the secured claim and special assessment with invoices within 7 days from entry of order and approve attorney's fees in an amount to be determined by separate order for violations of the automatic stay under 11 U.S.C. § 362(k).

Dated this 13th of July 2023

Presented by:

/s/Erin Lane
Erin Lane, WSBA 42504
Attorney for Debtor

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